

REMARKS

The present amendment is responsive to the Final Action dated 02/27/04 and two Advisory Actions dated 04/14/04 and 07/20/04.

Claim 34 which the Examiner has indicated contains allowable subject matter has been placed in independent form by incorporation claim 26 therein. Support for the claim language of claims 34 and 36, *e.g.*, “not toxic to non-insect species” is supported in the original application as explained in the applicant’s letter and remarks dated 05/03/04. It is noted that the Examiner has indicated in the Office Action of 07/20/04 that the language as now amended would be acceptable in view of identification of support if the ingredients are identified. The Examiner also stated in the Advisory Action that “non-toxic” is not supported as a novel or unobvious consideration absent specifying the ingredients and that intentions do not provide patentability. It should be noted that ingredients are now specified in both independent claims 34 and 36.

The Examiner added that the surfactants and fluid should be identified in claim 34 and that the method should be an indoor method, otherwise beneficial insects are destroyed, which is harmful to the environment. The applicant has now responded through appropriate amendment of claims 34 and 36 to all of the objections except the last one concerning the limitation to an indoor method.

Reconsideration of the limitation to indoor environment is believed to be in order and is requested for the following reasons. As the Examiner will recognize, the composition has to be applied as a spray to insects in order to form a defined coating as claimed on the insects to kill them. Consequently, it must be sprayed directly onto observed insect pests. This is easy to do so without spraying the composition directly onto useful insects such as bees. Moreover, the spray composition when sprayed from a pressurized container will also immediately spread out and be diffused throughout the atmosphere so that it is almost immediately diluted by air to a tiny fraction of the air, *e.g.*, by a factor of tens of thousands to one and will spread further as water evaporates until its

concentration in the environment is merely a trace. That happens within, say, 5 to 20 feet from the sprayer and with a mist or fog, the aerosol particles are in such a small concentration that only a few land on any one insect so that the spiracles of useful insects are not covered and therefore the composition is harmless to the environment and to useful insects. For these reasons it should be clear that the composition and method are not harmful to the environment. Favorable consideration and removal of the stated objection is therefore believed to be in order and is respectfully requested.

In the Final Action of 02/27/04, the Examiner asked what was intended in claim 28 by the expression “non-aqueous solution.” The applicant refers to liquids other than water. This includes non-aqueous liquids that are not generally considered toxic to non-insect species such as humans as, for example, when applied to the skin. This might include things such as glycerin, soy oil, sunflower seed oil or a liquid that will evaporate readily such as alcohol, *e.g.*, ethyl alcohol. Accordingly, the term “non-aqueous solution” is believed to be clear, concise, definite and unambiguous. Favorable consideration and removal of the stated objection under 37 U.S.C. 112 is therefore believed to be in order and is respectfully requested.

The Examiner also stated that the group of surfactants could include toxic surfactants. To eliminate this possibility, the applicant has specifically provided in claim 34 and 36 that the solution is “devoid an insecticide or surfactant or other substance that is toxic to non-insect species including higher animals and humans.” In view of this amendment, the claim language excludes surfactants that may be toxic. Favorable consideration is requested.

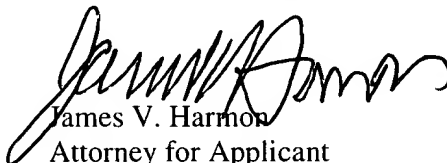
To overcome the toxicity objection to claim 33, the claim has now been amended to provide that the cations which are already stated to be “biocompatible” are in an amount that is safe and not toxic to non-insect species, a characteristic that was inherent in the application as filed. How else could the composition as a whole be non-toxic? Moreover, this provision is inherent from the specification as a whole and from the “biocompatible cation” wording already present in the claim.

Favorable consideration and removal of the stated objection is therefore believed to be in order and is respectfully requested. Please see applicant's letter of 07/20/04.

The Examiner has objected to the term "enveloping" because the insect may have to be rolled over to do it. Accordingly, the term "enveloping" has been eliminated.

For these reasons, the remaining amended claims are believed to be in condition for allowance. Favorable consideration and allowance of claims 27-39 is therefore believed to be in order and is respectfully requested.

Respectfully submitted,


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8-19-04
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